

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

In re TYCO INTERNATIONAL, LTD.
MULTIDISTRICT LITIGATION (MDL)

MDL No. 02-MDL-1335-PB

Docket No. 03-cv-1352

ROSEMARIE STUMPF v.
NEIL R. GARVEY, et al.
(In re TyCom Ltd. Securities Litigation)

O R D E R

Plaintiffs move for letter rogatory for the deposition in Ireland of James Brennan.¹ Document nos. 800 and 812. The defendants object. Document nos. 806 and 807.

Deposition by letter rogatory is specifically provided for in Fed. R. Civ. P. 28(b)(2). Since Ireland is not a signatory to the Hague Evidence Convention, a letter of request or letter rogatory is an appropriate and customary method of taking evidence in Ireland. Defendants suggest that plaintiffs must first show that Brennan is uncooperative and/or would not respond to a notice. There is no requirement for parties to check their common sense at the courtroom doors. Brennan is a convicted

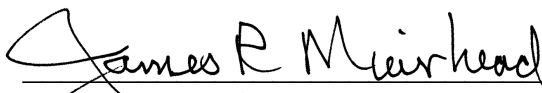
¹Pursuant to the Deposition Protocol Order (Document no. 765) and my Order (Document no. 816) Mr. Brennan has been substituted as an individual to be deposed. Document no. 818.

felon who has been called a dangerous liar by his sentencing judge. It would certainly be folly to accept Brennan's word to voluntarily appear for deposition. The letter rogatory is the appropriate tool to accomplish the deposition. Additionally, a Rule 31 deposition is a poor substitute for an oral deposition and, in a case of this magnitude, resort to a Rule 31 deposition does not make sense.

Finally, Judge Barbadoro has said that "the plaintiffs have not sufficiently alleged that their losses were caused by . . . (the) purportedly fraudulent . . . omissions (of Brennan participating in the offering), and therefore cannot be the basis for plaintiffs' § 10(b) claim here." Document no. 514, n.14, p.36. However, Judge Barbadoro did not find that his testimony is immaterial to claims still in dispute. Brennan is prominently stated as a participant in the IPO at Document no. 2, ¶¶ 9, 15, 16h, 54, 56, 60, 63, 64, 65, 66, 67, 68, 69, 83, 162 and 163. These allegations alone are sufficient to meet any Rule 26(b)(1) test. Considering that they are but the tip of the ice berg as to his involvement, his testimony is not only material but perhaps even key.

Plaintiffs' motion (document no. 800) is granted and the order shall issue.

SO ORDERED.

A handwritten signature in black ink, reading "James R. Muirhead". The signature is written in a cursive style with a large, stylized initial "J".

James R. Muirhead
United States Magistrate Judge

Date: October 26, 2006

cc: Counsel of Record